

JOHN A. THOMPSON, TRUSTEE IN INSOL-
VENCY OF GEORGE S. DAVIS,

vs.

DANIEL B. BANKS.

DECEMBER TERM, 1849.

[ABSOLUTE DEED DECLARED A MORTGAGE—FRAUD.]

UPON proper averments and sufficient evidence, a Court of Equity will treat an absolute deed as a mortgage, and decree a redemption by the mortgagor, or a sale for the purpose of paying the sum due.

Where a bill alleges that a deed, absolute on its face, was intended to be a mortgage, and was procured with the fraudulent design of setting it up as an absolute deed, contrary to the express agreement and understanding of the parties at the time of its execution, and the answer denies the fraud, the complainant must prove it by evidence, direct or circumstantial.

It is well established that fraud may be inferred from facts and circumstances; from the character of the contract, or from the condition and circumstances of the parties.

[George S. Davis executed a deed, dated the 25th of Sept., 1840, by which he conveyed, for the consideration of \$500, certain leasehold estate to Daniel B. Banks absolutely. Said Davis afterwards, on the 6th of October, 1846, applied for the benefit of the insolvent laws, and John A. Thompson was appointed his permanent trustee, who, on the 3d of November, 1849, filed the bill in this case, attacking said deed upon the grounds stated in the following opinion of the Chancellor.]

THE CHANCELLOR :

This case was argued before me during the sittings of the term by the solicitor of the complainant, and is now submitted under the rule.

The bill which is filed by the complainant as the insolvent trustee of George S. Davis, alleges that a deed executed by said Davis, on the 25th of Sept., 1840, and by which the grantor conveyed to the defendant, Banks, certain leasehold estate in the city of Baltimore, absolutely for the sum of five hundred dollars, was intended as a mortgage merely, to secure